IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 279 of 2000.

Date of decision: 6.8.2007

Babu Ram Sharma ... Petitioner

Versus

State of H.P. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. N.D. Sharma, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General, with Mr. R.M. Bisht, Deputy Advocate General, for the respondents.

Deepak Gupta, J. (Oral):

This writ petition is directed against the order of the learned H.P. State Administrative Tribunal dated 30.3.2000 passed in O.A. No. 1564/1999.

The petitioner was initially appointed as Steno-Typist in the year 1971 and was promoted as Accountant in the year 1975. He was thereafter promoted as Superintendent in the year 1985. On 17.3.1998, the respondents ordered that the petitioner who was then posted as Superintendent Grade-II, is promoted as Registrar (on ad hoc basis) of the Board of Ayurvedic & Unani Systems of Medicines, H.P. for a period of six months or till the post is filled up on regular basis (whichever is earlier). This order also made clear that the petitioner

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

would have no right to claim any benefit of his having held the post of Registrar on ad hoc basis.

Vide order dated 20.11.1998 this arrangement was ordered to be continued till 31.12.1998. On 31.12.1998, respondent No. 1 appointed one Dr. P.D. Sharma as the Registrar of the H.P. Ayurvedic and Unani Board. The petitioner challenged the appointment of Dr. P.D. Sharma in this Court by filing CWP No. 3 of 1999, which was rejected on the ground that the petitioner should first approach the H.P. State Administrative Tribunal. The petitioner thereafter approached the Tribunal by filing O.A. No. 1564/1999. In the meantime, Dr. P.D. Sharma was transferred and in his place respondent No. 4 Dr. Neel Chand was appointed as a Registrar.

The petitioner challenged these appointments before the Tribunal. The main ground of the petitioner is that since he had been promoted as a Registrar, his promotion could not be cancelled without giving him an opportunity of hearing. The petitioner also prayed that he legitimately expected that the arrangement whereby he was promoted as a Registrar and continued as such upto 31.12.1998 would be continued in future. He has submitted that by removing him from the post of Registrar, his rights have been adversely effected and the order of appointment of respondent No. 4 as Registrar is illegal and unconstitutional. The learned Tribunal held that the petitioner had no right to be appointed or to continue as Registrar and, therefore, dismissed the Original Application.

We have gone through the entire record and find that at the time when the petitioner was initially appointed as a Registrar, the State had not framed any Recruitment and Promotion Rules for appointment of a Registrar. It was under these circumstances that the

petitioner was appointed/promoted as a Registrar on ad hoc basis. The order of his appointment clearly stated that this was a temporary ad hoc arrangement and was to continue till regular appointment was made. The State thereafter framed the draft Recruitment and Promotion Rules and provided that the post of Registrar would be filled up by deputation from amongst the Ayurvedic Chikitsa Adhikaries or Senior Ayurvedic Chikitsaks having 15/5 years service. Though these rules have not been officially notified, in the absence of statutory rules they can be considered to be executive instructions. As per the draft rules, the post of Superintendent which the petitioner was substantively holding does not even fall within the feeder category from which appointment could be made to the post of a Registrar. The orders whereby the petitioner had been promoted clearly stipulated that his appointment/promotion was on temporary basis and he was promoted in his own pay scale. Therefore, the petitioner cannot claim that he could have any legitimate expectation to the post. Further he had no inherent right to hold the post since as per the draft Recruitment and Promotion Rules framed he does not even fall within the field of choice. Since the orders were categorical that the petitioner was appointed on ad hoc basis till regular appointment is made, the petitioner has no right to claim that he should be promoted as Registrar.

In view of the aforesaid discussion, we are of the opinion that there is no merit in the writ petition, the same is dismissed. No order as to costs.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

August 6, 2007
(BSS)